

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JERMAINE JONES : CIVIL ACTION NO. 03-3113
:
v. :
: CRIMINAL ACTION NO. 99-776
:
UNITED STATES OF AMERICA :

Padova, J.

MEMORANDUM

October __, 2003

Jermaine Jones has filed a pro se Motion to Vacate Sentence and Set Aside Conviction, pursuant to 28 U.S.C. § 2255. For the reasons that follow, Mr. Jones' Motion will be denied in all respects.

I. RELEVANT BACKGROUND

On June 14, 2000, Jermaine Jones was convicted by a jury of being a convicted felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). On December 15, 2000, Mr. Jones filed a motion to bar enhanced sentencing pursuant to 18 U.S.C. § 924(e). On January 19, 2001, the Court denied this Motion. At his sentencing hearing, the Court determined that Mr. Jones qualified for a sentencing enhancement pursuant to § 924(e), based upon his prior criminal record. Therefore, on April 24, 2001, the Court sentenced Mr. Jones to 180 months of imprisonment, five years of supervised release, a \$500 fine and a \$100 special assessment. Mr. Jones filed a notice of appeal on April 20, 2001. This appeal was denied on September 12, 2002. On May 15, 2003, Mr. Jones filed the instant motion.

II. DISCUSSION

I. Armed Career Criminal Sentencing Enhancement

Mr. Jones first argues that his sentencing enhancement, pursuant to § 924(e), is unconstitutional, because the jury in his trial was never asked to determine the existence of his prior criminal convictions beyond a reasonable doubt for the purpose of applying the enhancement.¹ § 924(e), commonly known as the armed career criminal enhancement, provides that a person who violates 18 U.S.C. § 922(g) and has three previous convictions for a violent felony or a serious drug offense shall be subject to a minimum term of imprisonment of fifteen years. 18 U.S.C. § 924(e). Without the § 924(e) enhancement, the maximum penalty for a violation of § 922(g) is ten years. 18 U.S.C. § 924(a)(2).

It is well settled that the government does not have to prove beyond a reasonable doubt the existence of a conviction which increases the maximum statutory penalty. In Apprendi v. New Jersey, 530 U.S. 466, 490 (2000), the United States Supreme Court specifically excluded the fact of a prior conviction from the elements of an offense that must be submitted to a jury and proven beyond a reasonable doubt before they may be used to enhance a

¹ Mr. Jones stipulated at his trial to the existence of one prior felony conviction, a necessary element of the crime defined in § 922(g). (See 6/12/00 N.T. at 9-11.) Thus, to the extent that Mr. Jones' Motion can be read to challenge his conviction based upon the Government's failure to prove this element of the crime to the jury, this argument has no merit.

defendant's sentence above the statutory maximum. The Court in Apprendi wrote, "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Id. (emphasis added); see also United States v. Mack, 229 F.3d 226, 235 n.12 (3d Cir. 2000). Thus, Mr. Jones' argument that the fact of his prior convictions should have been submitted to the jury and proven beyond a reasonable doubt before the § 924(e) enhancement was applied has no merit.

II. Constitutionality of 18 U.S.C. § 922(g)

Mr. Jones next argues that 18 U.S.C. § 922(g) is unconstitutional, as it violates the Commerce Clause of the United States Constitution. The United States Court of Appeals for the Third Circuit has specifically held that § 922(g) does not violate the Commerce Clause, so long as the government proves that the gun traveled in interstate commerce at some time in the past. United States v. Coward, 296 F.3d 176, 183 (3d Cir. 2002); United States v. Singletary, 268 F.3d 196, 204-5 (3d Cir. 2001). The Court gave the jury in this case clear instructions that the gun's travel in interstate commerce was a necessary element of the crime, which needed to be proven by the Government before the jury could convict. (6/13/00 N.T. at 124-25.) Consequently, Mr. Jones' argument has no merit.

III. Ineffective Assistance of Counsel

Mr. Jones first argues that his defense counsel was ineffective for failing to object to this Court's failure to submit the fact of Mr. Jones' prior convictions to the jury before applying the § 924(e) enhancement. As discussed, *supra*, the law does not require that the fact of Mr. Jones' prior convictions be proven beyond a reasonable doubt for purposes of applying this enhancement, and the failure of Mr. Jones' attorney to make a meritless objection does not constitute ineffective assistance of counsel.

Mr. Jones next argues that his counsel was ineffective for failing to ask the Court to give the jury an "adverse inference charge," apparently regarding the Government's failure to prove that the gun possessed by Mr. Jones traveled in interstate commerce. (Def's Mot. at 17.)² The Government submitted substantial evidence on this issue, including the testimony of a firearms expert concerning the location where the gun was manufactured. (See 6/13/00 N.T. at 52-55.) Furthermore, as discussed, *supra*, this Court provided clear instructions to the jury on the need to establish this element beyond a reasonable doubt. Thus, there was no basis for Mr. Jones to request an "adverse inference" instruction, and defense counsel's failure to

² Mr. Jones appears to argue that, because the Government failed to prove this element of the crime, he is actually innocent of the crime. (See Def's Mot. at 17.)

do so does not constitute ineffective assistance of counsel.

Thus, the Court finds that Petitioner's ineffective assistance of counsel claims "clearly fail[s] to demonstrate either deficiency of counsel's performance or prejudice to the defendant." United States v. Dawson, 857 F.2d 923, 928 (3d Cir. 1988). Therefore, to the extent that Mr. Jones' Motion can be read to request an evidentiary hearing on his ineffective assistance of counsel claims, this request is denied. Furthermore, as Mr. Jones' claims of ineffective assistance of counsel have no merit, Mr. Jones' motion to vacate his sentence and set aside his conviction based upon this alleged ineffective assistance is denied.

III. CONCLUSION

For the foregoing reasons, Mr. Jones' Motion to Vacate Sentence and Set Aside Conviction, pursuant to 28 U.S.C. § 2255, is denied in its entirety. An appropriate order follows.

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	:	
	:	
UNITED STATES OF AMERICA	:	

ORDER

AND NOW, this 22nd day of October, 2003, upon consideration of Jermaine Jones' Motion to Vacate Sentence and Set Aside Conviction (Docket # 68), the Government's Response, and all related submissions, **IT IS HEREBY ORDERED** that this Motion is **DENIED** in its entirety.

BY THE COURT:

John R. Padova, J.